

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JURY DEMAND

MARIA ESTHER DE CASTILLO

v.

GILBERTO CARDENAS AND
SOUTHERN FOODS GROUP, LLC

§
§
§
§
§

CIVIL ACTION NO. 7:16-CV-457

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Now come SOUTHERN FOODS GROUP, LLC and GILBERTO CARDENAS and file this Notice of Removal and in support thereof, respectfully show the Court the following:

A. PARTIES AND PROCEDURAL BACKGROUND

1. The lawsuit was filed on April 22, 2016, by Plaintiff, Maria Esther De Castillo, a purported "resident" of Mexico in her Petition. The defendants are Southern Foods Group, LLC, a company organized under the laws of Texas with its principal place of business in Dallas, Texas; and Gilberto Cardenas, a resident and citizen of Texas.

2. The motor vehicle accident made the basis of this lawsuit occurred on February 29, 2016. The Plaintiff alleges in her Original Petition that Defendant Cardenas was negligent in operating his motor vehicle, causing injury to the Plaintiff. The Plaintiff further alleges that Defendant Southern Foods Group, LLC, is responsible for the negligence of Defendant Cardenas pursuant to the theory of *respondeat superior*.

B. REMOVAL IS PROPER UNDER 28 U.S.C. §§ 1441, 1332

3. The party who urges jurisdiction upon the court bears the burden of demonstrating that the case is one properly before the federal tribunal. *B, Inc. v. Miller Brewing Co.*, 63 F.2d 545 (5th Cir. 1981).

4. This lawsuit is being removed pursuant to 28 U.S.C. § 1441, on the grounds that the case is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter under 28 U.S.C. §1332 because the Plaintiff and Defendants are diverse in citizenship, and the amount in controversy exceeds \$200,000.00 but not more than \$1,000,000.00. Accordingly, if a suit is not removable at the time of filing but later becomes removable, the notice of removal must be filed within 30 days after the defendant's receipt "through service or otherwise," of copy of an amended pleading, motion, order, or other paper from which the defendant can ascertain that the case has become removable. 28 U.S.C. § 1446(b); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68-69 (1996). Venue is proper pursuant to 28 U.S.C. § 1441(a) as this is the federal district court for the district embracing the place where the state court suit is pending. This lawsuit is removable based on Plaintiff's admissions of July 5, 2016, and Defendants became aware of same upon service of such admissions. Furthermore, Defendants were provided with medical records and Plaintiff's Original Petition sets forth alleged future treatment in excess of \$200,000.00 but not more than \$1,000,000.00.

5. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332(a). Venue is proper pursuant to 28 U.S.C.

§ 1441(a) as this is the federal district court for the district embracing the place where the state court suit is pending.

C. FIRST NOTICE THAT CASE WAS REMOVABLE

6. Defendant Southern Foods Group, LLC, was served with Plaintiff's Responses to Requests for Admission on July 5, 2016. At the time of receiving said admissions from Plaintiff, Defendants also received medical records and bills from the Plaintiff, and Plaintiff's Original Petition sets forth alleged future treatment in excess of \$200,000.00 but not more than \$1,000,000.00. Because the parties became diverse upon service of the requests for admissions and because the medical records received from the Plaintiff and her Original Petition set out alleged future treatment in excess of \$200,000.00 but not more than \$1,000,000.00, this case became removable upon service of the admissions. This notice of removal is filed timely.

D. DIVERSITY OF CITIZENSHIP & AMOUNT IN CONTROVERSY

7. The district courts of the United States have jurisdiction over this action based on diversity of citizenship among the parties. At the time of the filing of this lawsuit, Plaintiff stated she was a resident of Mexico. Thereafter, through Plaintiff's Responses to Requests for Admissions of July 5, 2016, she has now admitted she is a citizen of Mexico. Defendant Cardenas is a resident and citizen of Texas and The United States of America and Defendant Southern Foods Group, LLC is a Texas entity organized under the laws of Texas with its principal place of business in Dallas, Texas, where its operational, managerial and policy-making center is located. There is complete diversity between Plaintiff and the Defendants.

E. ALL DEFENDANTS AGREE TO THE REMOVAL

8. All Defendants join in the removal.

F. CONCLUSION

9. Removal of this action is proper under 28 U.S.C. § 1441 since it is a civil action brought in a state court. The federal district courts have jurisdiction over the subject matter under 28 U.S.C. § 1332 because all parties are diverse in citizenship. Finally, removal is proper because the amount in controversy exceeds \$200,000.00 but not more than \$1,000,000.00.

10. As required by 28 U.S.C. § 1446(d), a copy of the Notice of Removal is being served on Plaintiff, by and through his attorney of record, and is also being filed with the 430th District Court, Hidalgo County, Texas.

11. Concurrently with this Notice of Removal, the appropriate Notice of Removal is being filed in state court.

12. Copies of all process, pleadings, and orders filed in this cause, as well as an "Index of Matters Being Filed," are attached hereto in accordance with Local Rules.

WHEREFORE, Defendants, SOUTHERN FOODS GROUP, LLC and GILBERTO CARDENAS, remove this action from the 430th Judicial District Court, Hidalgo County, Texas, on this 28th day of July, 2016, pursuant to statute and in conformity with the requirements set forth in 28 U.S.C. § 1446.

DAVIDSON TROILO REAM & GARZA, P.C.
601 N.W. Loop 410, Suite 100
San Antonio, Texas 78216
Telephone: (210) 349-6484
Facsimile: (210) 349-0041

//s// David R. Rangel

DAVID R. RANGEL
State Bar No. 24041749
Federal I.D. No. 875461
drangel@dtrglaw.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel pursuant to the Federal Rules of Civil Procedure, on this the 2nd day of August, 2016:

Mr. Jeffrey M. Stern
THE STERN LAW GROUP
4909 Bissonnet Street, Suite 100
Bellaire, Texas 77401

//s// David R. Rangel

DAVID R. RANGEL